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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR GONZALEZ,

Defendant and Appellant.

B213900

(Los Angeles County  
Super. Ct. No. BA335513)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Patricia J. Titus, Judge. Affirmed.

Judith Vitek, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Edgar Gonzalez appeals from the judgment entered following a jury trial in which he was convicted of two counts of second degree robbery, counts 2 and 3 (Pen. Code, § 211), one count of conveying an access card with intent to defraud and without the cardholder's or issuer's consent, grand theft, count 6 (Pen. Code, § 484e, subd. (a)), and his admission that he suffered a prior conviction for assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) in case No. VA099902 on April 3, 2007. He was found not guilty of one count of second degree robbery, count 4 (Pen. Code, § 211) and one count of grand theft, count 7 (Pen. Code, § 484e, subd. (a)).<sup>1</sup> He was sentenced to prison for a total of 14 years and four months, consisting of the middle term of three years, doubled to six years by reason of his prior strike conviction for count 2; one-third the middle term, or one year, doubled to two years, consecutive, for count 3; one-third the middle term of two years, or eight months, doubled to 16 months, consecutive, for count 6; plus five years for the prior serious felony enhancement.

Appellant's *Marsden*<sup>2</sup> motion was heard and denied.

The evidence at trial with reference to counts 2 and 6, established that on January 13, 2008, at approximately 1:30 a.m., Timothy Malooly was walking down 3rd Street near Manhattan Place when two men walked in front of him. As Malooly got closer to the men, they turned around and pushed him up against a building. The men told Malooly to be quiet, corralled him up against the building, and ordered him to give them all his money. One of the men put his arms around Malooly's neck and put the tip of a knife up to his neck while the other man emptied Malooly's pockets, taking a cell phone, an iPod, keys, and a wallet containing three credit cards, an ATM card, a driver's license, and approximately seven dollars in cash. The robbers told Malooly not to look at them and then fled. Malooly gave no one permission to use his credit cards.

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<sup>1</sup> One count of robbery, count 1, and one count of grand theft, count 5, were dismissed as the victim in those counts was not available for trial.

<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

Approximately 30 minutes later, Malooly's credit card was used to buy gasoline. Malooly did not make the purchase.

The evidence at trial with reference to count 3 established that on January 16, 2008, at approximately 10:30 p.m., Jeffery Delongchamp was walking south on La Brea near Sycamore in the County of Los Angeles when two men, matching the description of the men who robbed Malooly, grabbed him and "fast walk[ed]" him approximately 50 yards around the corner. One of the men, holding a dark bat or club, held Delongchamp's arms while the other man went through Delongchamp's pockets, taking his wallet and the contents of his pockets. The robber holding the club threatened to bash in Delongchamp's head if he looked at the robber. Delongchamp saw one of the robbers enter a white minivan and later identified a photograph of a minivan as the subject van. Delongchamp's wallet contained his driver's license, credit cards, and a Visa gift card. Delongchamp gave no one permission to use his cards.

Raymundo Razo was employed at a car wash on Jefferson and Western and sometime before January 21, 2008, was asked by a detective to be on the lookout for a white minivan. On January 21, Razo saw a man driving a white minivan use a credit card at an ATM and then drive away. Razo copied down the license plate and gave the number to the detective. Razo identified a photograph of a person he believed to be the man who drove the van and used the ATM.

On January 24, 2008, Detective Ron Kim of the Los Angeles Police Department went to appellant's house and saw appellant moving items out of a white minivan parked in front of the garage area. Detective Kim told appellant that it was suspected that the van was involved in robberies. Appellant agreed to talk to the detective and consented to a search of the minivan. Inside the van, the detective found a receipt for the purchase of gas on January 13, 2008 at 2:01 a.m., charged to the credit card of Malooly, an aluminum bat wrapped with black tape, and a steak or paring knife. Appellant was arrested.

Detective Webster Wong of the Los Angeles Police Department transported appellant to jail. En route, appellant asked how much time he would be getting.

Appellant indicated it was just “a strong-arm, [and he] was just the driver. . . .” Appellant calculated he was “probably going to get 5 years.”

Following waiver of his *Miranda*<sup>3</sup> rights, appellant stated the minivan was registered to his mother and that he occasionally drove it. He claimed he got Malooly’s credit card from a friend and used it to purchase gas for himself and friends. Appellant was shown still photos from the security camera of the gas station where Malooly’s credit card was used. The photos depicted the white minivan and a man pumping gas into a truck, and appellant identified himself as the driver of the van and the man pumping gas. The gas station was about a 15 minute drive from where Malooly was robbed.

While in a jail cell, appellant was recorded stating in essence he had been arrested for robberies but that he could not be identified in a lineup because he “never got out.” Appellant claimed he was using credit cards to fill up people’s gas tanks but then “they got us on camera fool.”

After review of the record, appellant’s court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 4, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

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<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

**DISPOSITION**

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P.J.

SUZUKAWA, J.